

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9423  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare decreasing the petitioner's Food Stamps because of the income of an additional household member. The issue is whether an adult daughter who lives with the petitioner must under the pertinent statutes and regulations be considered a member of the petitioner's household for food stamp purposes, and whether her income is thus "deemed" available to the household in calculating the petitioner's food stamps.

## FINDINGS OF FACT

In lieu of an oral hearing, the parties submitted the following stipulation of facts:

1. Petitioner, [name], and her family reside together. This group consists of three adults and two minors: petitioner 55; husband, S, 62; daughters L, 19, and M, 15, and granddaughter, A, 8.
2. Three family members receive monthly Social Security payments totaling \$751.90. Petitioner's elderly husband is disabled and receives \$501.90. The petitioner and her minor daughter each receive \$125.00, because of SC's disability.
3. Petitioner received food stamps as a household of four. The Department of Social Welfare removed L from the grant when she refused to register for work.
4. L was employed as a SRS day care worker at the St. Albans Bay School between October, 1988 to June, 1989 and September 8, 1989 to October 27, 1989. L

lived with her parents and the others, but purchased and prepared her meals separately from the others.

5. The Department of Social Welfare added L to the food stamp household, thereby imputing her earnings to the household, and sent the petitioner two separate food stamp notices. The first, dated August 14, 1989, assessed an overpayment of \$974.00 for the period of October, 1988 to June, 1989. The other, dated September 20, 1989, reduced the petitioner's food stamp grant from \$197.00 to \$126.00. These notices are attached as Exhibits A & B.

ORDER

The department's decision is reversed.

REASONS

In this case, the petitioner, her husband, and their minor daughter and minor granddaughter seek separate "household status" from the petitioner's adult daughter. The petitioner alleges that the federal food stamp statute defining "households" conflicts with federal and state regulations (the federal and state regulations being identical-see infra). The hearing officer agrees--but for different reasons than those argued by the parties.

The federal statute, 7 U.S.C. § 2012, provides, in pertinent part:

"Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption or (3) a parent of minor children and that parent's children (notwithstanding the presence in the home of any other persons, including parents and siblings of the parent with minor children) who customarily purchase food and prepare meals for home consumption separate from other persons . . . except that (other than as provided in clause (3)) parents and children, or siblings, who live together shall be treated as a

group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member. (Emphasis added.)

Plainly and unambiguously, the above statute sets forth three basic definitions of households. The petitioner, her husband and their minor children (15-year-old daughter and 8-year-old granddaughter<sup>1</sup>) clearly constitute a household under clause 3 of the above definition:

. . . a parent of minor children and that parent's children (notwithstanding the presence in the home of any other persons, including parents and siblings of the parent with minor children) who customarily purchase food and prepare meals for home consumption separate from other persons . . .

The petitioner, her husband, and their minor children in fact purchase and prepare their meals together, separate from one "other person" in the household--the petitioner's adult daughter. Thus, all the requirements of clause 3 are met.

Because the adult daughter does not purchase food and prepare meals with the others, she cannot be considered a member of the clause (3) household. The adult daughter could only qualify for food stamps (if she applied for them) as a separate household under clause (1) of § 2012. Whether or not she receives food stamps, however, she is exempted from the deeming provisions in exactly the same manner as the individuals named in the parenthetical "notwithstanding" clause of clause 3--i.e., "parents and siblings of the parent with minor children." It should be noted that the

parenthetical clause within clause (3) is exemplary, not exclusive. Because the example specifically includes siblings of parents of minor children (as well as those parents' parents), clause (3) is not, as the department argues, limited to three-generational households. Nothing in § 2012 can be read as excluding adult siblings of the minor children of a clause (3) household from the scope of the parenthetical example contained in clause (3).

The department maintains that the petitioner's adult daughter cannot be considered a separate household from her "sibling"--the petitioner's minor daughter--because of the deeming provisions contained in the "except that" clause of the above statute. However, it must be concluded that the deeming provisions of the statute, plainly and unambiguously, do not apply to "clause 3" households (see emphasis in § 2012, supra).

The department is correct that its position is supported by the federal regulation contained at 7 C.F.R. § 273.1(a) (and incorporated verbatim into the state regulations at F.S.M. § 273.1(a)). Unfortunately, the regulation, by significantly expanding the limited "deeming" provisions of the statute, is in direct conflict with the statute. 7 C.F.R. § 273.1(a) provides, in pertinent part:

a. Household Definition

1. General Definition

A household is composed of one of the following individuals or groups of individuals provided they

are not residents of an institution (except as otherwise specified in paragraph (e) of this section), are not residents of a commercial boarding house, or are not boarders (except as otherwise specified in paragraph (c) of this section):

- i. An individual living alone;
- ii. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
- iii. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

2. Special Definition

- i. The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together, even if they do not do so:
  - A. A spouse as defined in 271.1 of a member of the household;
  - B. Children under 18 years of age under the parental control of an adult household member;
  - C. Parent(s) living with their natural, adopted or step-child(ren) and such child(ren) living with such parent(s), unless at least one parent is elderly or disabled as defined in 271.1. If at least one parent is elderly or disabled, separate household status may be granted to the otherwise eligible parent(s) or child(ren) based on the provisions of paragraph (a)(1) and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section.
  - D. Siblings (natural, adoptive, half or step brothers and sisters) living together, unless at least one sibling is elderly or disabled as defined in 271.2. If at least one sibling is elderly or disabled, separate household status may be granted to the otherwise eligible elderly or disabled sibling based on

provisions of paragraph (a)(1) of this section and subject to the provision of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section . . .

The above regulation does not even mention "clause 3" of the statute in its "general definition" of households. Rather, it divides "clause 1" of the statute into two separate household categories and places "clause 2" households from the statute into a third paragraph. Then, without regard for the statutory provision exempting "clause 3" households from the statutory deeming provisions, the regulation sets forth a "special definition" whereby spouses, children under 18 living with their parents, parents and children, and siblings living together are deemed to purchase and prepare meals together whether or not they, in fact, do so. Id 273.1(a)(2)(i). (It then sets out the elderly/disabled exceptions as applying either to parent/child or sibling households.<sup>2</sup>)

In Fair Hearing No. 8210, a case involving a similar, though not identical, question of interpreting the statutory and regulatory definitions of a food stamp household, the board held:

. . . by enacting a regulation that altered the wording and sentence structure of the statute, the agency has effectively disqualified individuals like the petitioners in this case from the favorable consideration to which the statute entitles them. This, the agency (and the department) cannot legally do. Monasco v. Silver, 447 U.S. 807, 825 (1980).

The same analysis applies here. By ignoring the "clause 3" exemption to the deeming provisions set forth in

the statute, the agency's regulation disqualifies the petitioner from benefits she clearly is entitled to under the statute.<sup>3</sup> The department's decision is, therefore, reversed.

FOOTNOTES

<sup>1</sup>The petitioner's granddaughter is not the daughter of either of the petitioner's children who live with her. The department does not dispute that the petitioner is the legal custodian, and therefore a "parent", of her granddaughter for food stamp purposes.

<sup>2</sup>It was the applicability of these exceptions to the deeming provisions that the petitioner and the department focused upon in their written arguments. Inasmuch, however, as the Board has concluded that neither the deeming provisions nor the exceptions thereto apply to the petitioner's situation, it need not address these arguments.

<sup>3</sup>As was also the case in Fair Hearing No. 8210, the department here offers an "interpretation" of the regulation by a "regional director" of the federal food stamp agency. Like in Fair Hearing No. 8210, however, this is of no import because it does not address the issue--whether the regulation is consistent with the statute. See Id. pp 5-6.

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